I.

A. On May 15, 1969, Vice officers of the City of Pasadena Police Department paid the $5.00 admission fee and viewed the film at the "Venus Theater". They then submitted their Affidavit for Search Warrant to a Municipal Court Judge. On May 19, 1969, the Judge personally viewed the film, together with the Vice officers, after each had paid the fee. Thereafter the judge issued the Search Warrant.

1. This was the second viewing by the Vice officers, the first for the Judge.

2. The Judge, after personally viewing the film and reading the Affidavit in Support of the Petition for Search Warrant; issued the Search Warrant on May 19, 1969. (*Flack v. Municipal Court* (1967), 66 Cal. 2d 981; 429 P. 2d 192).

3. The complaint was issued by the Pasadena City Prosecutor on May 26, 1969, upon the recommendation of the Judge and the request of the Vice officers.

4. On June 2, 1969, a plea of not guilty was entered and the matter was set for Jury Trial on July 16, 1969.

B. Counsel for Petitioner at that time was Mr. Howard Gershan, a graduate of Loyola Law School in 1961, and duly licensed to practice law in the State of California since June 7, 1962.

1. Counsel for Petitioner (Defendant) reviewed the Complaint, Search Warrant, Affidavit and complete police report pertaining to the subject case and

discussed the same with the Assistant City Prosecutor, Mr. David Press. After being fully informed of the nature of the case, and the contents of the film from all the information given, Counsel for Petitioner (Defendant) stated that Petitioner (Defendant Goulet), as the owner and manager of the Venus Theater, would plead *nolo contendere,* if the City Prosecutor's Office would dismiss the charges against the other two named defendants in the case. This offer was accepted by the Office of the Pasadena City Prosecutor.

2. The Reporter's Transcript for July 16, 1969, pages 3 to 6, fully sets forth the Court's acceptance of the *nolo contendere* plea on that date, and the People's motion to dismiss as to the other two defendants in reliance upon this agreement.

3. The Reporter's Transcript of May 11, 1970, sets forth one of the hearings on Petitioner's (Defendant's) motion to withdraw his former plea of "*nolo contendere*".

4. The Certified Copy of the "Trial Court's Docket Sheets Showing the Record of Each Proceeding in the Municipal Court", pages 2 and 3, (8-21-69); page 4, (1-20-70); page 5, (4-30-70 and 5-11-70), show that Petitioner (Defendant) had made the same motion to withdraw his plea of *nolo contendere* prior to his motion of June 11 (Docket Sheets, page 6, (6-11-70), and that on each occasion the motion was duly heard and denied by the Trial Judge.

5. Counsel for Petitioner has stated with substantial accuracy the results of the proceedings held in the

Appellate Department of the Superior Court of the State of California. (Pet. App. B). We note, however, that the citation of "People v. West" included therein is incomplete. That citation is: *3 Cal. 3d 595.*

6. He has accurately stated the results of the proceedings before the Court of Appeal, Second District; and the California Supreme Court.

C. The film, together with the entire record of the proceedings, is available for examination by this Honorable Court. Respondent has officially requested the "clerks in possession" of the various portions of the record to certify and transmit the complete record for that purpose, under the provisions of Rule 21, (1) and (2), of the Rules of the Supreme Court of the United States.

ARGUMENT.

I.

The Seizure of the Film in the Instant Case Was Not in Violation of Any Provision of the United States Constitution. The Search and Seizure Made in the Case Did Not Violate the Constitutional Provisions of the First, Fourth and Fourteenth Amendments.

The Vice officers viewed the film in its entirety and were of the opinion that it was obscene within the rules laid down by this Court and the California Supreme Court. They then were sent by the City Prosecutor to consult one of the trial judges. They prepared an Affidavit for Search Warrant, together with a detailed police report which described the film in detail. The trial judge went with them to the theater and personally viewed the entire film himself. He then issued the Search Warrant, based upon the information supplied in the Affidavit and the description of the film, together with his own personal observation of the contents of the film. Having made his opinion that the film was obscene known to the City Prosecutor, the Complaint was thereafter issued.

The Affidavit for Search Warrant, the Search Warrant, the descriptive report of the Vice Officers, and the Complaint are a part of the record we have asked to be transmitted to the Court.

Thoroughly familiar with the federal cases in point, which are discussed and cited therein, the Supreme Court of the State of California decided in 1967 that police officers and prosecutors lack the capacity to determine what is or is not obscene, in *Flack v. Municipal Court*, 66 Cal. 2d 981; 429 P. 2d 192.

> "Determination by police officers of the status of suspected books, papers, etc. (including films)

—whether to be classified as obscene or not obscene—is not enough protection to the owner to constitute due process."

"Thus, with the exception of a situation involving a legitimate emergency, even if the search is contemporaneous with an arrest, a search warrant must be secured prior to any search for or seizure of material alleged to be obscene."

Flack v. Municipal Court, supra, p. 991.

Since that decision, no allegedly obscene material of any kind has been seized by the officers of the Pasadena Police Department, and no Complaints have been issued by the City Prosecutor, without a prior determination by one of the trial judges that the subject matter was obscene. Those of us who bear the unenviable duty of enforcing the criminal laws of California can only presume that the judges of the California Supreme Court are qualified to interpret the federal decisions they purport to analyze.

In the *Flack* opinion, the court said, at page 992:

"The concept of placing an intervening impartial tribunal between the enforcing officer and his target is not alien to this court in cases having First Amendment overtones."

In reaching the conclusions arrived at in the *Flack* Case, the California Supreme Court considered and cited the following United States Supreme Court decisions:

Niemotko v. Maryland (1951) 340 U.S. 268.

Roth v. United States (1957) 354 U.S. 476, 485—which incidentally was still the law at the time of the

case before us now, and still is except as to conflict with *Stanley v. Georgia.*

Beauharnais v. Illinois (1952), 343 U.S. 250, 266;

Winters v. New York (1948), 333 U.S. 507, 510;

Chaplinsky v. New Hampshire (1942), 315 U.S. 568, 571-572;

Near v. Minnesota (1931), 283 U.S. 697, 716.

These cases are all authority for the proposition that *obscenity* does not come within the ambit of protection afforded to speech by the First Amendment, and the states remain free to suppress obscenity through the implementation of their police powers.

I repeat, the instant case arose and was filed before *Stanley v. Georgia* eroded *Roth v. United States.* And this is not a case involving mere private possession of obscene materials in a home. (Nor does Section 311.2 of the California Penal Code purport to prohibit or punish such private possession of obscene matter, for one's personal use.) It involves the commercial exhibition of an obscene film in a theater which was open to any member of the public who chose to pay the $5.00 admission fee.

II.

Prior Determination of Obscenity by the Court.

We are aware, as was the California Supreme Court in the *Flack v. Municipal Court* case, *supra,* at p. 986, that:

> "under the Fourteenth Amendment, a State is not free to adopt whatever procedures it pleases for dealing with obscenity . . . without regard to the possible consequences for constitutionally protected speech."
>
> *Marcus v. Search Warrant* (1961), 367 U.S. 717.

But we respectfully submit that the procedure followed in the instant case filled the gap in procedure which was pointed out as defective in the *Marcus* case. It is our understanding that the Missouri procedure was disapproved of because it authorized a court to issue a warrant for search and seizure on the sworn affidavit of a police officer stating facts indicating that "obscene material" was being kept in a place or building, without any scrutiny by the court of any materials considered by the officers to be obscene, and leaving too much discretion to the officers as to the material selected.

Here, we repeat, the issuing judge personally viewed the film in question before issuing the search warrant for its seizure.

Counsel for Petitioner laments the absence of a "prior adversary hearing." But Counsel knows as well as we do that such a requirement amounts to a total injunction in so far as the enforcement of the obscenity laws are concerned. We have tried to hold such a hearing on many occasions, and although they demand them, defendants and their counsel refuse to participate in them by producing the film. A *subpoena duces tecum* will not induce them to bring the film to such a hearing. A protective order by the trial judge will not induce them to produce the film at such a hearing. A combination of *subpoena duces tecum* and protective order will not induce them to bring it to the hearing. Neither will a fine for contempt of either the protective order or the subpoena. When threatened with any other action within the discretion of the judge who sets the "prior adversary hearing", they routinely take the Fifth Amendment.

A judicial requirement that we must hold a prior adversary hearing before we can proceed in an obscenity case is an absolute ban on enforcement, because immediately upon the receipt of notice of the hearing every defendant invariably disposes of the film in question.

Nor have we been able to find any decision of the United States Supreme Court which specifically holds that a prior adversary hearing, as such, is an essential condition precedent to a lawful search and seizure

Any judge who still professes to believe that defense attorneys are acting in good faith when they demand a prior adversary hearing in obscenity cases is either hopelessly naive, or a willing partner to hypocrisy.

This may, in fact, be the basic reason the courts of California have repeatedly held that "a prior adversary hearing as to obscenity before any warrant to seize a motion picture alleged to be obscene is not essential."

People v. Donald Richard Goulet, et al. (1970), Superior Ct. No. CR A 9088;

People v. De Renzy (1969), 275 Cal. App. 2d 380; 79 Cal. Rptr. 777;

Monica Theater v. Municipal Court (1970), 9 Cal. App. 3d 1; 88 Cal. Rptr. 71.

The California courts have also held that the California procedure for reviewing seizures of obscene material is adequate and hence constitutional.

Holden v. Arnebergh (1968), 265 Cal. App. 2d 87; 71 Cal. Rptr. 401;

Aday v. Superior Court (1961), 55 Cal. 2d 789; 13 Cal. Rptr. 415.

Obscenity, in whatever form, is wholly unprotected by the free speech guaranty of the First Amendment, except that which one possesses for his personal or private use.

> *Roth v. United States,* 354 U.S. 476, 484-485; 1 L. Ed. 2d 1498, 1506-1507; 77 S. Ct. 1304.

The several states are free to regulate and suppress such matter by virtue of their constitutionally reserved police power, and courts will not hesitate to enforce any valid law against obscenity.

> *Jacobellis v. Ohio,* 378 U.S. 184, 202; 12 L. Ed. 2d 793, 806; 84 S. Ct. 1676.

It must follow then, that although great care must be taken to fully preserve First and Fourth Amendment rights of each defendant, those amendments should not be interpreted in such a manner as to deny to the State of California the power to enforce its obscenity laws. Any construction of a constitutionally granted right which prevents the enforcement of a constitutionally enacted criminal statute is itself a constitutional impairment.

The requirement of a prior adversary hearing before seizure of obscene film would constitute such a denial.

As an additional safeguard to defendants, beyond that heretofore enumerated, California provides for a "Pre-trial hearing" and the opportunity to challenge any search and seizure by the accused, through Penal Code Section 1538.5. Those portions of that section which deal with misdemeanor violations are included, and incorporated herein as Appendix A. (Pertinent parts only).

III.

Under California Penal Code Section 1018, in Misdemeanor Prosecutions Where the Accused Is Represented by Counsel, and a Plea of Guilty or "Nolo Contendere" Is Personally Entered by the Defendant, the Granting of a Subsequent Motion to Withdraw Such Plea Is Discretionary With the Trial Court.

Calif. Penal Code Section 1018, the pertinent provisions of which are set forth in Petitioner's "Appendix C (7)."

In the instant case, the accused was at all times represented by counsel. After consulting with counsel, accused personally entered his plea of "*nolo contendere*". Before accepting that plea, the trial judge inquired very carefully into his understanding of the nature of the plea and its probable results.

[See Reporter's Transcript of Proceedings on July 16, 1969, page 3, beginning with line 1, through line 26; page 5, lines 1 through 26; and page 6, lines 1 through 14.]

The trial court exercised its discretion reasonably and properly in denying defendant's subsequent motions to withdraw his *nolo contendere* plea.

People v. Fratianno (1970), 6 Cal. App. 3d 211, 85 Cal. Rptr. 755;

In re Mosley (1970), 1 Cal. 3d 913, 464 P. 2d 473.

"Penal Code Section 1018, stating that with certain exceptions "every plea must be put in by defendant himself in open court" placed the re-

sponsibility for entering a plea upon defendant and his counsel; and the trial court had no responsibility to conduct the defense of an accused represented by counsel."

People v. Coogler (1969), 71 Cal. 2d 153, 454 P. 2d 686.

"A plea of guilty is an admission of every element of the offense, so that no other proof is necessary, and a judgment entered upon such a plea is not reviewable on the merits, even though the judgment is appealable, unless there exists 'irregularities going to the jurisdiction or legality of the proceedings'."

People v. Warburton (1970), 7 Cal. App. 3d 815, 86 Cal. Rptr. 894.

As Counsel for Petitioner has pointed out in his Brief, a plea of "*nolo contendere*" amounts to a plea of guilty, by California Statute. *Penal Code Section 1016 (3)*. (See footnote on page 5 of Petitioner's Brief.)

"Mere advice or assurance by private attorney to defendant accused of crime will not vitiate plea entered in reliance thereon."

In re Atchley (1957), 48 Cal. 2d 408, 310 P. 2d 15;

People v. Rose (1959), 171 Cal. App. 2d 171, 339 P. 2d 954.

"Bad advice, persuasion or wilful false statements of fact by attorney selected by defendant will not suffice to vitiate plea of guilty."

People v. Croft (1955), 134 Cal. App. 2d 800, 286 P. 2d 479.

"To warrant setting aside a plea of guilty defendant must show good cause with convincing evidence."

People v. Bauman (1955), 131 Cal. App. 2d 595, 281 P. 2d 74;

People v. Moffett (1955), 137 Cal. App. 2d 626, 290 P. 2d 667.

We have stated the California law. We come now to *Boykin v. Alabama* (1969), 395 U.S. 238, 23 L. Ed. 274; 89 S. Ct. 1709:

Boykin v. Alabama, supra, necessitates a more precise showing on all phases of a guilty plea than mere inferences, however plausibly drawn from circumstances on the record, but this does not require the recitation of a formula by rote or the spelling out of every detail by the trial court. It only means that the record must contain on its face direct evidence that the accused was aware, or made aware, of his right to confrontation, to a jury trial, and against self-incrimination, as well as the nature of the charge and the consequences of his plea. Each must be enumerated and responses elicited from the person of the defendant.

We submit that this was done in the instant case, as evidenced by the Reporter's Transcript of July 16, 1969, which is a part of the record.

Petitioner's plea was voluntary and in conformity with California law and practice.

In re Tahl (1969), 1 Cal. 3d 122, 460 P. 2d 449.

IV.

There Is No Satisfactory Showing That Petitioner's Attorney at the Time He Entered His Plea of Nolo Contendere Was Incompetent, or That Petitioner Was Inadequately Represented by Counsel; or That Any Representative of the Office of the Pasadena City Prosecutor Misled Him in Any Way; or That the Trial Judge Abused His Discretion in Denying the Motion to Withdraw His Plea.

1. Please see p. 13, Reporter's Transcript, for summary of proceedings; and p. 13, lines 26-27, *in re* the court's statement that there was not sufficient ground to grant the motion.

2. In addition, please see p. 14, lines 10-11; and p. 15, lines 12-13; and Mr. Daniel's statement as to Mr. Gershan's competence, p. 15, lines 23-28, through line 1, on p. 16.

3. The discussion *in re* Mr. Gershan's alleged incompetence continues on p. 16, lines 2-6; p. 19, lines 8-9.

4. Please see the cross examination by Mr. Press, Assistant City Prosecutor of Pasadena, P. 19, lines 23-28, *in re* Mr. Gershan's graduation from Loyola Law School in 1961, and license to practice law in the State of California since June 7, 1962.

5. Please see p. 20, R. T. of May 11, 1970, lines 7-13, *in re* Mr. Gershan having read and discussed the City Prosecutor's file and the police reports of the Pasadena Vice officers. Also p. 20, *in re* his discussion with Mr. Press, particularly lines 23-28, and line 1, on p. 21.

6. Please see p. 21 *in re* the question by the court, and Mr. Gershan's answer, "I was", and the further questions by the court, together with Mr. Gershan's answers, lines 8-28 and line 1, on p. 22. See also lines 2-10, on p. 22, *in re* the court's question, and Mr. Gershan's answer, "Generally, yes."

7. Please see also p. 22, lines 12-14, and lines 1-4, on p. 23; also lines 5-10, and line 13, for the advice of Mr. Gershan to his client.

8. Please see R. T. of May 11, 1970, p. 25, lines 16-21, and lines 22-27, *in re* Mr. Gershan's "lack of a specific recollection" *in re* a possible future felony charge.

It should be noted at this point that at that time the California Penal Code required two prior convictions in order for the third to be considered as a felony. The statute has since been amended to require only one prior conviction.

9. The court's ruling appears on p. 26, lines 4-8, and lines 11-18.

10. The motion to dismiss as to Petitioner's two employees who were charged with the same offense was granted by the court, as a result of the "plea bargaining" heretofore mentioned, on p. 27, lines 22-27.

11. On p. 11, of Petitioner's Brief, Counsel for Petitioner asserts that it is "impossible for counsel in an obscenity prosecution to effectively advise the client without viewing the film." He sets this forth as his number one ground for granting the writ.

12. On p. 5, Counsel for Petitioner indicates that he had subsequently advised Petitioner that the film in question "appeared to be protected by the free speech and press provisions of the First and Fourteenth Amendments."

13. On p. 9, Counsel for Petitioner states that "It was further claimed (before the Appellate Department of the Superior Court) that the motion picture film involved was not obscene . . ."

The only inference which may be drawn is that Counsel is making that same representation to this Honorable Court.

Yet Counsel for Petitioner, himself, has not viewed the film in question. How then can he be critical of Petitioner's prior attorney who relied on the Affidavit for Search Warrant and the police report description of the film, together with the additional facts to make his own determination?

We respectfully submit that the film is the best evidence on this particular point. The trial judge viewed it personally before issuing the search warrant; and it is available for examination by this Honorable Court as well.

This film is not one of those "name films" such as "I am Curious Yellow" or "Black is Beautiful". It is what is commonly referred to as a "stag show film". The officer's description of it is included herewith as Respondent's Appendix B.

V.

Section 311.2 of the California Penal Code Is Distinguishable From the Statute Under Consideration in the Case of Stanley v. Georgia.

Petitioner challenges the constitutionality of California Penal Code Section 311.2 in so far as it applies to him.

That section was upheld by the California Court of Appeal in *Cohen v. Municipal Court* (1967), 250 Cal. App. 2d 861, 58 Cal. Rptr. 846, which decision is controlling unless overruled by implication in *Stanley v. Georgia* (1969), 394 U.S. 557. The statute involved in *Stanley v. Georgia* went much further than Penal Code Section 311.2. The Georgia law prohibits any possession of obscene material. The California law, on the other hand, prohibits only possession for sale, distribution, or exhibition. It is directed at commercial use. Stanley was prosecuted for private possession for his own personal use. The decision emphasizes the attempted invasion of the privacy of one's own home and thoughts. It distinguishes *Roth v. United States*, 354 U.S. 746 and the subsequent cases relying thereon on the ground that these "cases dealt with the power of the State and Federal Governments to prohibit or regulate certain public actions taken or intended to be taken with respect to obscene matter."

Thus, we conclude that *Stanley v. Georgia* does not apply to the California statute to render it unconstitutional.

VI.

In Challenging the Judgment of the Appellate Department of the Superior Court of the State of California and the California Court of Appeals, Second District, Counsel for Petitioner Has Failed to Overcome the Provisions of California Law by Which Both Courts Are Bound in re the Determination of the Competence of Counsel.

The evidence in this case shows no fraud, duress, mistake or denial of due process. (*People v. Caruso,* 174 Cal. App. 2d 624.)

To justify relief on the basis that counsel was inadequate, defendant must establish the attorney's incompetence. There was no such specific claim or showing.

People v. Robillard, 55 Cal. 2d 88, 97; 358 P. 2d 295;

People v. Wilson, 267 Cal. App. 2d 410, 414; 73 Cal. Rptr. 179;

People v. Evans, 270 Cal. App. 2d 594; 75 Cal. Rptr. 902.

No good cause was shown to allow withdrawal of the plea.

People v. Nat Lipton, CRA 8698.

There was no showing that the Trial Court did not properly and adequately consider the various motions for the withdrawal of the plea, which were continued from time to time by the court at the defendant's (Petitioner) request for the better part of a year. Hence there was no abuse of discretion, and in so far as the "plea bargaining" was concerned the People lived up to their promise to the letter.

People v. Barteau, 10 Cal. App. 3d 483.

The trial court had the duty and the discretion to determine the weight and the credibility of the affidavits of the defendant and his former counsel.

People v. Caruso, 174 Cal. App. 2d 624; 345 P. 2d 282.

Mere advice and persuasion or the expression of matters of opinion by the defendant's attorney will not suffice to vitiate the plea of guilty (or *nolo contendere*).

People v. Butler, 70 Cal. App. 2d 553; 161 P. 2d 401;

People v. Daigle, 194 Cal. App. 2d 340; 15 Cal. Rptr. 53;

People v. McDonough, 198 Cal. App. 2d 84; 17 Cal. Rptr. 643.

Upon a plea of "*nolo contendere*", the question of establishing obscenity through an expert witness qualified on statewide contemporary standards is not reached or in issue.

However, a reading of the police report description of the film, together with the Affidavit in Support of Search Warrant, plus the fact of personal viewing by the trial judge and his experienced determination that the film was "obscene" is sufficient evidence that it went beyond that standard to sustain the rulings of the Appellate Courts. Defendant's conduct in knowingly exhibiting the film to paying customers in a commercially operated theater took him out of the protection afforded by *Stanley v. Georgia.* Petitioner was in violation of Section 311.2 of the California Penal Code. There was no error, or deprivation of Petitioner's constitutional rights, on the part of any of the California courts.

Conclusion.

For the foregoing reasons, a Writ of Certiorari to review the judgment and decision of the Court of Appeal of the State of California, Second Appellate District, entered in the above entitled case on April 15, 1971, should be denied.

Respectfully submitted,

BYRON B. GENTRY,
Pasadena City Prosecutor,
Attorney for Respondent.

APPENDIX A.

Pertinent Provisions of California Penal Code Sec. 1538.5.

"Sec. 1538.5. Motion for return of property or suppression as evidence; Special hearings: New complaint or indictment: Appeals: Review by mandate or prohibition: Stay of proceedings: Dismissal of action: Release of Defendant: Bail: Motions based on freedom of speech or press.

"(a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds: (1) [not pertinent.]

(2) The search or seizure with a warrant was unreasonable because (i) the warrant is insufficient on its face; (ii) the property or evidence obtained is not that described in the warrant; (iii) there was not probable cause for the issuance of the warrant; (iv) the method of execution of the warrant violated federal or state constitutional standards; or (v) there was any other violation of federal or state constitutional standards."

"(b) When consistent with the procedures set forth in this section and subject to the provisions of Section 170 through 170.6 of the Code of Civil Procedure, the motion should first be heard by the magistrate who issued the search warrant. . ."

"(c) Whenever a search or seizure motion is made in the municipal, justice or superior court as provided in this section, the judge or magistrate shall receive evidence on any issue of fact necessary to determine the motion."

"(d) If a search or seizure motion is granted pursuant to the proceedings authorized by this section, the property or evidence shall not be admissible against the movant at any trial or other hearing unless further proceedings authorized by this section or Section 1238 or Section 1466 are utilized by the people."

"(e) & (f)" [not pertinent.]

"(g) If the property or evidence relates to a misdemeanor complaint, the motion shall be made in the municipal or justice court before trial and heard prior to trial at a special hearing relating to the validity of the search or seizure. . . ."

"(h) If, prior to the trial of a felony or misdemeanor, opportunity for this motion did not exist or the defendant was not aware of the grounds for the motion, the defendant shall have the right to make this motion during the course of trial in the municipal, justice or superior court."

"(j)—[provides among other things for the right of appeal.]

"(k), (l), (m), (n) & (o) [provide for all other possible contingencies and rights.]

APPENDIX B.

Officer's Description of the Film.

Pasadena Police Department, Pasadena, Calif.

Investigation Report PPD Form, 112.

Classification PC 311.2 Exhibiting Obscene Matter.

Date of this report 5-15-69.

Case Number 604 297.

Reference to: 2226 E. Colorado Blvd., The Venus Theatre.

Acting on information that possible lewd films were being shown at the Venus Theatre at the above location, Agent R. McCray and Agent R. Montoya of the Vice-Narcotic Section of the Pasadena Police Department, purchased admission tickets and entered the establishment to conduct an investigation. The price of admission was $5.00 per person and was collected by the two John Doe individuals listed on the preceding page. The entrance to the main portion of the theatre is against the west wall and the seating capacity will accommodate approximately 70 people. At the south portion of the interior is a movie screen which is approximately 8 feet high and approximately 10 feet in width. When the undersigned officers entered the seating portion of the structure, there were approximately 25 additional male patrons seated in the Theatre.

These officers entered the establishment at 9:30 PM and viewed two 15 minute segments of film which consisted of one nude female in each segment. The first film depicted a nude female on what appeared to be a couch placed against a wall and consisted of close up views of the vagina region as the subject sat, stooped and squatted in various positions. Portions of the film

also depicted the subject as she fondled her breasts with both hands and also rubbed the vagina area but did not touch anything other than the inner portion of the thighs. The second film depicted basically the same as the first with the exception of the subject being a different individual and the filming took place on what appeared to be a king-sized bed.

At approximately 10:00 PM, another 15 minute segment of film depicted a Female Caucasian with strawberry blonde hair, lying on what appeared to be a tiger skin cloth which had been placed on the floor. The subject was again completely nude with the exception of dark hose on her legs and black high heeled shoes on her feet. The female subject was filmed as she lay on the tiger skin cloth, on her back with her feet elevated and legs spread apart, thus giving a close up view of the vagina region as well as the anus. Several scenes revealed the individual as she took one of her breasts in her hand, pulled it upward and licked the nipple with her tongue. The subject took up several positions which completely revealed the anus and vagina area and on two occasions, she was lying on her back with her legs spread apart and she took the forefinger of each hand and spread the outer portion of the vagina, thus displaying the clitoris and on one of the scenes, she gyrated the inner vaginal wall while spreading the outer portion. Near the end of the segment, she was depicted lying on her back with her legs spread apart and twice she inserted the middle finger of her right hand into the vagina and pushed it in and out to the second joint of the finger. Although the segment of film was silent (Accompanied by recorded music), a close up view of the subjects face gave a clear impression of the mouth and lips and it was obvious to

anyone in the audience that she was saying "Fuck me, Fuck me, Fuck me." This portion of the film ended at 10:15PM, at which time there was a short intermission.

At approximately 10:20PM another segment of film was displayed which revealed several nude male and female subjects as they fondled each other and one scene depicted a male as he lifted a female in a manner which placed her vagina area against his mouth. Several other scenes depicted two female subjects as they fondled each others breasts and kissed one another on the mouth, as well as the breasts. Following this segment of film, The title "The Act of Love" appeared on the screen and identified it as a "Dragon Film". The camera man and the producer were also identified but are not known to these officers at this time.

This segment of film began by showing two fully clothed females seated on a bed, one of whom was blonde (Long Hair) and the other having long black hair. The Black-haired subject wore a white blouse, black trousers and had a red kerchief tied around her neck. The Blonde individual was attired in a gold colored sleeveless dress, which appeared to be a mini-dress. Conversation accompanied this segment of film but was of poor quality to the extent it was impossible to understand. There was some conversation at the beginning of the film, as the black-haired female unbuttoned her own blouse and then removed her trousers, revealing a pair of red briefs. She then reached around behind the blonde, unzipped her dress and the blonde removed it, revealing her completely nude body. At this time the black-haired individual removed her own blouse and exposed a nude body with exception of the red briefs. The two subjects then embraced one an-

other, kissed each other on the mouth and fondled and kissed one anothers breasts as well as the stomach region. This activity continued during the entire segment of film and there were numerous views of the pubic and vagina regions of both females.

At approximately 10:40PM, another segment of film began which depicted four fully clothed females as they appeared to be standing in a living room of some type of dwelling. One of the females (Negro) referred to one of the caucasian girls as a lesbian in front of the two remaining caucasian girls. One of the caucasian girls appeared to be in charge of the group and on one occasion, she walked to the blond subject, pulled open the front of her dress, revealing her nude breasts and took the left one in her hand and kissed it. As the females stood talking, a male subject came to the door of the apartment and said he was an insurance adjuster which had come to the location to check a leak in the roof. Prior to his entry, the female which appeared to be in charge of the group, told the others to "Act like glamorous, sophisticated cunts". As the male individual sat on the couch by the female in charge, the remaining two caucasian girls removed their clothing and were completely nude. Shortly thereafter, the one in charge removed her clothing and they began removing the clothing of the male. Soon, all parties concerned were completely nude, with exception of the male which appeared to be wearing white jockey shorts. One of the nude caucasian females went to the male on the couch and as he sat upright, she climbed up on the couch in a position where it appeared as though her crotch area was against his mouth and she reached back and rubbed his penis through the underwear. As this activity continued between the male and female on the couch, the

two remaining female caucasians were on the floor, kissing each other on the mouth, fondling and kissing the breast of each other and one would place her leg between the legs of the other.

Two other scenes depicted the female negro and the female on the couch as they rubbed the penis of the male through his under shorts. As the film continued, the male was suddenly nude as well as the females and he was then filmed while lying on top of the female negro, who was lying on her back with her legs spread apart and the male was between her legs and moving up and down giving the impression of intercourse although the actual penetration was not viewed by the audience. The female negro stated she had had enough and the male then moved to the couch where he took a position with a female caucasian exactly as that described with the negro subject. Again, he moved up and down rapidly, simulating intercourse. The scene would change from the male and female subject on the couch to the two female caucasians on the floor who were again fondling and kissing each others breasts and one female moved her head to the crotch area of the other and kissed the inner thigh of the right leg and then kissed the pubic hairs. Several scenes showed one female with her head between the legs of the other but the hair was so long, it was impossible to determine actual copulation. As the film continued, the male was shown as he lay on the floor fondling the breasts of one female and kissed the thigh and pubic hairs of another female on the couch. As the two female caucasians on the floor continued their embracing and kissing, one female was depicted lying on her back and the other sat on top of her in a position where her vagina region was directly against that same region of the girl on the

floor. As the two continued placing their vaginas together, the female on the bottom said "Make me come Lulu, make me come."

This entire segment of film depicted the male as he fondled the breasts of the females in addition to the activity described above. The film ended at apprx. 11:05PM at which time the undersigned officers left the location.

It is the opinion of the investigating officers that the activity depicted in the film is lewd and obscene therefore a complaint and search warrant to confiscate the film are requested.

Case pending.

Agent R. McCray/Agent R. Montoya
Vice-Narcotic Section
Investigative Division